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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/549,965	09/16/2005	Solomon R Eisenberg	BU-118XX	1273
207 7590 09/19/2007 WEINGARTEN, SCHURGIN, GAGNEBIN & LEOVICI LLP TEN POST OFFICE SQUARE BOSTON, MA 02109			EXAMINER COLQUITT, AARON BRUCE	
			ART UNIT 3735	PAPER NUMBER
			MAIL DATE 09/19/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/549,965

Applicant(s)

EISENBERG ET AL.

Examiner

Aaron B. Colquitt

Art Unit

3735

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-93 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-93 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Election/Restrictions

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

2. Group I, claim(s) 1-15 and 50-54, drawn to a magnetic stimulator adjacent to the brain.
3. Group II, claim(s) 16-26, 55-60 and 73-77, are drawn to a magnetic stimulator with a first frequency within 50Hz of the second frequency.
4. Group III, claim(s) 27-38 and 61-66, drawn to a magnetic stimulator with first and second frequencies between about 5KHz and about 100KHz.
5. Group IV, claim(s) 39-49 and 67-72, drawn to a magnetic stimulator with a beat frequency between 1Hz and about 50Hz being determined by the first and second frequencies.
6. Group V, claim(s) 78-93, drawn to a magnetic stimulator with a second conductor being electrically connected in series with a first conductor and spaced by a predetermined distance.

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7. The inventions listed as Groups I-V do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

Groups I-V have a common technical feature comprising a magnetic stimulator including a pair of coils where each coil produces a time-varying magnetic field of a different frequency. This technical feature fails to define a contribution over the prior art as evidenced by U.S. Patent No. 5,953,438 to Stevenson et al. that teaches such a feature.

8. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed and (ii) identification of the claims encompassing the elected invention.

9. The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

10. Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

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11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron B. Colquitt whose telephone number is (571) 270-1991. The examiner can normally be reached on Monday-Friday 7:30 - 5:00 EST.

12. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-270-2991.

13. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AC
9/16/2007


CHARLES A. MARMOR II
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700